

Department of Energy

Pt. 719, App.

or serve as lead counsel, when the rights of the contractors and the government can be effectively represented by a single legal counsel, consistent with the standards for professional conduct applicable in the particular matter. Contractors may propose to the General Counsel their preference for the individual or law firm to perform as the lead counsel for a particular matter.

(b) If a contractor, having been afforded an opportunity to present its views concerning joint or lead representation, does not acquiesce in the designation of one retained legal counsel to represent a number of contractors, or serve as lead counsel, then the legal costs of such contractor are not reimbursable by the Department, unless the contractor persuasively shows that it was reasonable for the contractor to incur such expenses.

Subpart E—Department Counsel Requirements

§ 719.40 What is the role of Department counsel as a contracting officer's representative?

(a) The individual selected as Department counsel for a contract subject to the requirements of this part must be approved by the contracting officer and the appropriate Chief Counsel, or General Counsel if at Headquarters. The Department counsel must receive written delegated authority from the contracting officer to serve as the contracting officer's representative for legal matters. The contractor must receive a copy of this delegation of authority.

(b) Actions by Department counsel may not exceed the responsibilities and limitations as delegated by the contracting officer. Delegated contracting officer representative authority may not be construed to include the authority to execute or to agree to any modification of the contract nor to attempt to resolve any contract dispute concerning a question of fact arising under the contract.

§ 719.41 What information must be forwarded to the General Counsel's Office concerning contractor submissions to Department counsel under this part?

Department counsel must submit through the General Counsel reporting system, the approved costs and status updates for all matters involving retained counsel, including but not limited to contractor litigation. The reports are to be received by the 15th day of the month following the end of each quarter of the fiscal year.

§ 719.42 What types of field actions must be coordinated with Headquarters?

(a) Requests from contractors for exception from this entire part must be coordinated with Headquarters.

(b) Requests from contractors for approval to initiate or defend litigation, or to appeal from adverse decisions, where legal issues of first impression, sensitive issues, issues of significance to the Department nationwide or issues of broad applicability to the Government that might adversely impact its operations are involved must be coordinated by Department counsel with the Deputy General Counsel for Litigation or his/her designee.

(c) Department field counsel must inform the General Counsel of any significant matter, as defined in this part, and must coordinate any action involving a significant matter with the General Counsel, or his/her designee, as directed by the General Counsel or his/her designee.

APPENDIX TO PART 719—GUIDANCE FOR LEGAL RESOURCE MANAGEMENT

Management and Administration of Outside Legal Services

- 1.0 Initiation of Litigation
- 2.0 Defense of Litigation
- 2.1 Disapproval of Defensive Litigation
- 3.0 Notice to the Department of Significant Matters and Litigation
- 4.0 Alternative Dispute Resolution
- 5.0 Cost Allowability Issues
- 5.1 Underlying Cause for Incurrence of Costs
- 5.2 Fees and Other Charges
- 6.0 Role of Department Counsel as the Contracting Officer's Representative